



IRS Nationwide
TaxForum

| 2018

Home Sweet (Tax) Shelter

Presented by:

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2017 Tax Cuts & Jobs Act Alert!

- State & Local Taxes Limited!
- Mortgage Interest Limited!
 - For some...
- Let's look at what's left



Property Taxes

While property taxes are a component of state and local taxes (like income and personal property taxes), the combined total of these items will be limited to \$10,000



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Exclusion of Gain on Sale

- These rules didn't change:
 - 2 of 5 year ownership & use tests
 - Up to \$250,000/\$500,000 based on filing status and qualification
 - Partial qualification & unforeseen circumstances rules still exist



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Private Mortgage Insurance

- This provision was brought back for 2017 returns only.
- Will it be extended for the 2018 returns or is it really gone (again)?



The Mortgage Interest Deduction

- By far, the rules for this deduction are most complex and most changed
- Interest on qualified acquisition indebtedness remains, but may be limited; interest on home equity indebtedness is gone



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§ 163(h)(3)(B) Acquisition Indebtedness

- In General, the term “acquisition indebtedness” means any indebtedness which—
 - Is incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer, and
 - Is secured by such residence



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Acquisition Indebtedness...

- Includes any indebtedness secured by such residence resulting from the refinancing of indebtedness meeting the requirements of the preceding sentence...



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Acquisition Indebtedness...

- \$1,000,000 Limitation - The aggregate amount treated as acquisition indebtedness for any period shall not exceed \$1,000,000 (\$500,000 MFS)
- Generally for loans in place on or before 12/15/2017



New Limits...

- The cap for deducting interest becomes **\$750,000** for anyone who closed on a mortgage *after* 12/15/2017 (with one exception)
- The new cap is a combined total for first and second mortgages, and a second personal residence if applicable
- Grandfathered debt



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§ 163(h)(3)(C) Home Equity Indebtedness

- In general, “home equity indebtedness” means any indebtedness (other than acquisition indebtedness)
 - secured by a qualified residence
 - to the extent the aggregate amount of such indebtedness does not exceed \$100,000



GONE, no phase out, just gone...

- What if it can be *traced* based on use of funds?
- Reg. §1.163-10T





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And Don't Forget Charles J. Sophy and Bruce H. Voss

- The Tax Court held that, for purposes of calculating qualified residence interest, the Sec. 163(h)(3) limits on the amount of indebtedness that qualifies as acquisition or home equity indebtedness do not apply separately to unmarried co-owners of property



Thank You Charles J. Sophy and Bruce H. Voss

- On appeal, the Ninth Circuit held the mortgage-interest deduction applies on a *per-taxpayer* basis
- IRS acquiesced to the Ninth Circuit decision





8181

VOID

CORRECTED

RECIPIENT'S/LENDER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.

OMB No. 1545-0901

2018

Form 1098

Mortgage Interest Statement

Copy A

For Internal Revenue Service Center

File with Form 1096.

For Privacy Act and Paperwork Reduction Act Notice, see the 2018 General Instructions for Certain Information Returns.

		1 Mortgage interest received from payer(s)/borrower(s) \$	
RECIPIENT'S/LENDER'S TIN	PAYER'S/BORROWER'S TIN	2 Outstanding mortgage principal as of 1/1/2018 \$	3 Mortgage origination date
		4 Refund of overpaid interest \$	5 Mortgage insurance premiums \$
PAYER'S/BORROWER'S name		6 Points paid on purchase of principal residence \$	
Street address (including apt. no.)		7 <input type="checkbox"/> If address of property securing mortgage is the same as PAYER'S/BORROWER'S address, check the box, or enter the address or description in box 8.	
City or town, state or province, country, and ZIP or foreign postal code		8 Address or description of property securing mortgage (see instructions)	
9 Number of properties securing the mortgage	10 Other		
Account number (see instructions)			

Form 1098

Cat. No. 14402K

www.irs.gov/Form1098

Department of the Treasury - Internal Revenue Service



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Equitable Ownership

- **Another troublesome area for sustaining interest deductions...**



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Who can deduct mortgage interest?

- In CCA 201451027, Chief Counsel advised that a person jointly & severally liable on a mortgage is entitled to deduct all of the interest he or she *actually* pays



Who can deduct mortgage interest? - CCA 201451027

- If both are liable, both are entitled, to the extent interest is paid by either of them.
- Where related persons co-own a house, but are not all liable on the mortgage, Regs. permit deduction where the t/p is the legal or equitable owner



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Equitable Ownership

- The indebtedness generally must be an obligation of the taxpayer and not an obligation of another.
- Section 1.163-1(b), Income Tax Regs., however, provides that even if a taxpayer is not directly liable on a bond or note secured by a mortgage, the taxpayer may nevertheless deduct the mortgage interest paid if he or she is the legal or equitable owner of the property subject to the mortgage.



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Equitable Ownership

- State law determines the nature of property rights, such as legal or equitable ownership
- Federal law determines the appropriate tax consequences of those rights.



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Equitable Ownership--T.C. Sum Op 2015-1

Under CA law an individual may overcome the presumption that the legal owner is also the equitable owner by showing that there exists an agreement or understanding between the parties evidencing an intent contrary to that reflected in the deed.





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Equitable Ownership Factors

*...a taxpayer may become the equitable owner of property if he or she assumes the **benefits and burdens** of ownership. In determining whether the benefits and burdens of ownership have been transferred to a taxpayer, Courts have often considered whether the taxpayer:*



Equitable Ownership Factors

1. has a right to possess the property and to enjoy the use, rents, or profits thereof;
2. has a duty to maintain the property;
3. is responsible for insuring the property;
4. bears the property's risk of loss;



Equitable Ownership Factors (CONT.)

5. is obligated to pay the property's taxes, assessments, or charges;
6. has the right to improve the property without the owner's consent; and
7. has the right to obtain legal title at any time by paying the balance of the purchase price.



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